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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

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Appellate Case No.: 2021-000165

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Glenn Odom, ……..……..……..…….. Respondent,

v.

McBee Election Commission,
Charles Short, Charles Sutton, and Hewitt Dixson,…… Appellants,

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# RESPONDENT'S FINAL BRIEF

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## COUNTER STATEMENT OF THE CASE

On September 1, 2020, general elections for two seats on Town Council and the office of Mayor were held in McBee, South Carolina. After the votes were counted, and results certified by Appellant McBee Election Commission (hereinafter "MEC), it was declared that Respondent Glenn Odom received 213 votes for the office of Mayor to Appellant Charlie Short's 203. (R. p. 549, line 17-p. 552, line 2). The results for the election for Town Council were as follows: James Linton 211; Robbie Liles: 201; Appellant Charlie Sutton: 191; and Appellant Hewitt Dixon: 174. (*Id.*). Appellants Short, Sutton, and Dixon filed a formal protest that same day, generally and conclusively claiming that a representative of Odom took improper actions regarding absentee ballots, amongst other allegations. (R. pp. 720-22). The next day, on September 4, 2020, MEC conducted a protest hearing, at which counsel for Odom informed the parties that he would no longer be representing Odom. (R. p. 559, lines 3-17). The MEC continued the hearing to September 25, 2020. (R. p. 566, lines 8-13).

On September 24, 2020, counsel for Short, Sutton, and Hewitt requested a continuance from the MEC. (R. pp. 286-87). Although counsel for Odom was not informed of the request for the continuance until hours before the hearing, on September 25, 2020, the MEC continued the protest hearing to October 14, 2020. (R. p. 287). On September 30, 2020, Odom filed a Motion to Dismiss, contending that the over one-month delay in holding the protest hearing by the MEC was in violation of S.C. Code Ann. section 5-15-130's time constraints and this Court's prior decisions. (R. pp. 65-66). On October 12, 2020, the MEC continued the protest hearing again to October 23, 2020, at Appellants Short, Sutton, and Dixon's request and over Odom's objection. (R. p. 288; p. 79 ¶ 7). On October 22, 2020, counsel for Short, Sutton, and Dixon requested another continuance over Odom's objection. (R. p. 289). MEC again granted a continuance, this

time to November 13, 2020. (R. p. 79 ¶ 7). On October 30, 2020, Odom was forced to file a Summons and Complaint in the Chesterfield County Court of Common Pleas seeking writs of mandamus and prohibition against the MEC, Short, Sutton, and Dixon. (R. pp. 78-80). Odom's Complaint sought an Order preventing the Appellants from further violating section 5-15-130's 48-hour time requirements, as well as requiring MEC to certify Odom, Linton, and Liles as the winners of the election.

After hearing arguments on November 10, 2020, the Circuit Court entered an Order denying Odom's requests for a Writ of Prohibition and Writ of Mandamus, but stipulated that if the November 13, 2020 protest hearing was continued, the Circuit Court would grant Odom's requests. (R. p. 10). Noting that this Court's decision in *Cole v. Town of Atlantic Beach Election Comm'n*, 393 S.C. 264, 712 S.E.2d 440 (2011), required that substantial deviations from the 48-hour provision would ordinarily require courts to nullify a protest hearing, the Circuit Court found that the delay was not substantial, even if it was troublesome, so long as the MEC did not continue the November 13, 2020 hearing. (R. pp. 9-10).

Under the shadow of the Circuit Court's Order, the MEC finally conducted the protest hearing on November 13, 2020. After hearing from seven witnesses, four of whom were called by Short, Sutton, and Dixon, the MEC decided that due to a "number of irregularities regarding an employee of a candidate involved in the absentee ballot process . . . we feel there is sufficient evidence to call for a new election." (R. p. 667, lines 16-20). The MEC reached this decision despite the fact that (1) there was no evidence introduced in the form of testimony or documentary evidence demonstrating that Baker was an employee of the Odom campaign, (2) at best, relevant testimony was only introduced from one elector demonstrating that Baker may have assisted in completing an online absentee ballot application request on his behalf, (3) there

was no documentary evidence or testimony demonstrating that Baker personally completed an online absentee ballot application request on the behalf of any other elector whose vote was certified, and (4) there was not sufficient evidence demonstrating that even if there were any irregularities, the result of the election was changed or rendered doubtful by their presence. On November 19, 2020, MEC entered an order finding that (1) Baker was an employee of an entity owned or directed by Odom and as such was a paid volunteer with the Odom campaign; (2) Baker improperly requested 28 absentee ballot applications for qualified electors in violation of S.C. Code Ann. section 7-15-330; and (3) the irregularities rendered the result of the election doubtful. (R. pp. 19, 21).

On November 19, 2020, Odom filed a Notice of Appeal in the Chesterfield County Court of Common Pleas, requesting that the Circuit Court reverse the MEC's decision. (R. pp. 383-384). Odom filed a memorandum in support of the Appeal. (R. pp. 385-388). The Circuit Court heard arguments on December 21, 2020, and in a December 29, 2020 Order held that the findings of the MEC were wholly unsupported by the evidence. (R. p. 13). The Circuit Court noted that the testimony established that while Baker assisted electors in making their own requests for an absentee ballot application, there was no evidence demonstrating that she personally made the request for 10 electors, much less 28 electors. (*Id.*). The Circuit Court further explained that this finding was supported by the Absentee Voter Detail List, which was submitted by Appellants and demonstrated that the electors made the requests themselves. (*Id.*). The Circuit Court found there was no evidence supporting that Baker was a paid volunteer of Odom's campaign, and that the MEC's consideration of a 2016 election challenge that was not part of the record was improper. (*Id.*). Essentially, the Circuit Court found that Baker's conduct consisted of assisting electors in making their own requests for absentee ballot applications, in

contrast to Baker personally making the request, and did not violate section 7-15-330; and even if it did, the conduct did not affect the outcome of the election, as there was no statutory authority for overturning an election based on a violation of section 7-15-330. (*Id.*).

On December 30, 2020, Short, Sutton, and Dixon filed a Motion for Reconsideration. (R. p. 420). In their memorandum in support of the motion, they argued that (1) Baker's conduct amounted to more than assisting electors in making their own requests for applications and that it violated section 7-15-330, (2) the MEC could take judicial notice of the 2016 election protest as specific evidence of Baker's credibility for the purpose of impeachment, and (3) there was evidence in the record supporting the MEC's decision. (R. pp. 421-40). They did not raise the issue of whether the Circuit Court had exceeded its scope of review. Odom filed a memorandum in opposition to the motion on January 13, 2021. (R. pp. 445-47). On January 20, 2021, the Circuit Court denied Appellant's Motion for Reconsideration. This appeal followed on February 18, 2021.

## COUNTER STATEMENT OF THE FACTS

This appeal arises from a hotly contested election in the tiny town of McBee, South Carolina.[1] McBee has a history of colorful and much disputed elections. In fact, this is not the first time in recent years this Court has been asked to make a final decision determining the outcome of an election contest in McBee. *See Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 831 S.E.2d 429 (2019). On September 1, 2020, the Town of McBee held its general election for two seats on the Town Council and for the office of Mayor. Glenn Odom and Charles Short were the candidates for the office of Mayor, while Dawn Boykin, Hewitt Dixon, Robbie Liles, James Linton, and Charles Sutton were running for Town Council. (R. p. 554).

[1] As of the 2010 census, McBee had a population of 867. *McBee, South Carolina*, Wikipedia, https://en.wikipedia.org/wiki/McBee,_South_Carolina (last edited June 3, 2021).

At the conclusion of a provisional ballot hearing on September 3, 2020, the MEC certified the election results, with Glenn Odom prevailing in the contest for Mayor, and James Linton and Robbie Liles taking the seats for Town Council. During the hearing, counsel for Appellants Short, Sutton, and Dixon made an appearance in relation to 13 challenges to absentee ballots made on behalf of his clients. (R. p. 454, line 25-p. 455, line 5). Five of these challenges were withdrawn by Appellants Short, Sutton, and Dixon at the beginning of the hearing. (*Id.*). Of the remaining eight challenges, only two were rejected by the MEC. (R. p. 457, line 17-p. 458, line 3; p. 506, lines 10-16). One of the rejected challenges was unopposed by Odom, Linton, and Liles, and the other involved a McBee citizen who had been recuperating in a nursing home in Darlington County at the time of the election. (R. p. 456, lines 10-14; p. 485, line 13-p. 506, line 14). During the hearing, Appellants raised the allegation that three electors had received absentee ballots without having ever requested them, but the MEC refused to hear the issue. The only evidence produced by Appellants of the unrequested absentee ballots were affidavits, and no challenge had been made on such a basis on the night of the election. (R. p. 476, line 1-p. 485, line 12). Appellants had hired a private investigator to find voting irregularities, but he was not present to provide testimony.[2] (*Id.*). After considering all challenged votes, the MEC certified that Odom had won the contest for the office of Mayor by ten votes. (R. p. 554). Liles had beaten Dixon by 27 votes, and Sutton by ten votes.

Not satisfied with this result, Short, Sutton, and Dixon filed a formal protest of the election with the MEC. (R. pp. 720-22). When the protest hearing was finally conducted by the MEC, Appellants Short, Sutton, and Dixon called four witnesses to provide testimony and

[2] Allegations were made at the hearing that Appellants' investigator had harassed and intimidated citizens and was the subject of an investigation by the Chesterfield County Sherriff's Office. (R. p. 478, line 13-p. 479, line 5).

claimed that voting irregularities occurred to such an extent that the election should have been overturned. For their first witness, Appellants called Sydney Baker, a lab director for Alligator Rural Water & Sewer Co.[3] (R. p. 575, line 19-p. 576, line 7). Baker testified that Odom did not work for or own Alligator, and had not worked there for at least three months prior to the election. (R. p. 576, line 20-p. 577, line 12; p. 585, line 17-p. 586, line 7). Leading up to the election, Baker decided to volunteer her time by assisting McBee citizens in requesting absentee ballot applications. (R. p. 579, lines 2-5). There is no evidence in the record that Baker was a volunteer for the Odom campaign or that Baker was ever paid by Odom or Alligator to participate in election activities. (R. p. 579, lines 7-9).

Baker would go door to door with an iPad and printer in her truck, and she would ask residents if they would like to vote absentee. (R. p. 579, lines 12-17). The iPad and printer were her own personal property. (R. p. 583, lines 1-8). If they answered in the affirmative, Baker would assist them in completing the online absentee ballot application request form. (R. p. 579, lines 12-17). Baker was not asked and did not provide testimony as to whether the request form was filled in by the elector or herself; however, the form requires private identifying information such as a birthdate and social security number, which would generally only be known to the elector and not freely shared with a volunteer.[4]

Baker described that she would "answer questions" as far as what to put where, and that she only helped them obtain a ballot. (R. p. 580, line 21-p. 581, line 4). Baker never testified that

[3] Alligator is a non-profit organization selling water and sewer services in Chesterfield County since 1987. Alligator Rural Water & Sewer Co., *About Us*, https://alligatorwater.myruralwater.com/about-us (last visited Aug. 20, 2021).

[4] The form is located at the State Election Commission website. S.C. State Election Comm'n, *Request Absentee Application*, https://info.scvotes.sc.gov/eng/voterinquiry/VoterInformationRequest.aspx?PageMode=AbsenteeRequest (last visited August 20, 2021).

she filled in the request form or submitted it for the elector. She also testified that she never touched a ballot, had nothing to do with how an elector voted, did not see an elector vote, and that she followed the laws of South Carolina dealing with absentee ballots. (R. p. 586, line 17-p. 587, line 3). It was suggested to Baker that she may have met with more than 10 individuals. (R. p. 580, lines 6-7). When asked if she met with more than fifty individuals, Baker guessed that it may have been 10 or 15. (R. p. 580, lines 11-14). Baker also stated that she didn't recall how many people she met with. (R. p. 580, lines 3-5). Baker was never asked if she provided her iPad for absentee ballot application requests to each and every one of the individuals, or if any of them declined her assistance. Baker did testify later that she did not assist every person she visited. (R. p. 581, lines 22-25).

Baker was also asked if it would surprise her that her name appeared on at least 28 ballots as a witness. (R. p. 581, lines 14-15). Baker replied that she was just guessing and didn't keep track, but that it wouldn't surprise her because she didn't keep track of numbers. (R. p. 581, lines 16-25). Baker never testified that she in fact assisted 28 electors in requesting absentee ballot applications, despite the misleading nature of the question (there is no evidence in the record that Baker's name appeared on 28 ballots). Simply put, the record is entirely devoid of any evidence of how many electors Baker may have assisted in filling out the online request form. While she may have met with 10 or 15 individuals, no testimony or evidence has been provided demonstrating how many of these individuals actually completed an absentee ballot application request, and how many declined her assistance.

Only one other witness called by Short, Sutton and Dixon offered non-hearsay testimony on the application for absentee ballots: Elizabeth Murphy. (R. p. 623, lines 7-9). Murphy testified that Baker came to her house to assist with the absentee ballot application request process. (R. p.

624, lines 11-25). Murphy never testified that Baker requested an absentee ballot without her knowledge, as stated by Appellants in their Initial Brief. (Appellant's Initial Br. at 13). Murphy also stated that no one tried to get her to vote for anyone specific or tried to influence her in any way. (R. p. 629, lines 6-9). When asked if she requested an absentee ballot on the internet, Murphy did respond that she never used an "internet computer," but she also stated that the form could have been completed on a phone, and that she didn't use the internet "per se on the computer." (R. p. 626, lines 7-18). Murphy was never questioned and did not offer testimony on what type of device was provided by Baker. Vitally, Murphy's vote was rejected by the MEC, and was not certified as part of the final vote tabulation for the election, so any irregularities with her vote are irrelevant and did not affect the election's outcome. (R. p. 545, line 24-p. 546, line 7).

June Wright, a witness called by Odom, testified that Baker helped him request the absentee ballot application because he can't read. (R. p. 645, lines 2-6). Wright was called to rebut an affidavit obtained by Appellant's investigator, David Milligan, purporting to show that Wright received an unsolicited absentee ballot. (R. p. 645, lines 7-19). Wright's testimony is a direct contradiction to Appellant's contention that Baker requested a ballot for him without his knowledge. (Appellants' Initial Br. at 13). To the contrary, Wright testified that he solicited his absentee ballot through Baker. (R. p. 645, lines 17-19). Wright also testified that he voted how he wanted to vote and was not affected by any undue influence. (R. p. 645, lines 20-21).

Based on the foregoing facts, the MEC definitively declared that 28 votes were improperly cast by absentee ballot due to misconduct by Baker, rendering the result of the election doubtful such that a new election was required. The Circuit Court reversed the MEC's decision on several separate grounds. Of primary importance to the Circuit Court's decision are

the following facts: (1) no witnesses testified that they were unduly influenced or that their absentee ballot did not accurately reflect their vote; (2) there is no evidence in the record of fraud or any false statements provided on election forms by Baker or any other participant in the subject election; (3) there are facts in the record supporting the Circuit Court's finding that Baker did not wrongfully request at least ten absentee ballot applications, and that she was only assisting electors with making their own requests for applications; (4) there is no evidence in the record that Baker was paid by the Odom campaign; and (5) even if Baker should have registered as a statutorily authorized representative, it would have had no impact on the election results, as there is no evidence that she improperly assisted ten or more electors, and the only witnesses before the MEC testified that no one influenced their vote, and that their ballots reflected who they chose to elect.

## STANDARD OF REVIEW

In municipal election cases, courts are only permitted to review the trial court's judgment to correct errors of law. *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379, 537 S.E.2d 543, 545-46 (2000). This review only extends to finding of fact if those findings are completely unsupported by the evidence in the record. *Id.* Courts are required to employ every possible reasonable presumption to sustain a contested election. *See George v. Mun. Election Comm'n of City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999) (citations omitted). Elections must not be set aside due to mere irregularities or illegalities unless the irregularities changed the result or rendered it doubtful. *Jenkins v. McCarey*, 222 S.C. 426, 433, 73 S.E.2d 446, 449 (1952). Additionally, an election challenger has the burden of demonstrating through record evidence the existence of fraud, a constitutional violation, or a statute providing that an irregularity or illegality invalidates an election. *Taylor v. Town of Atlantic Beach Election*

*Comm'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005). "Voters who have done all in their power to cast their ballots honestly and intelligently are not to be disfranchised because of an irregularity, mistake, error, or even wrongful act, of the officers charged with the duty of conducting the election, which does not prevent a fair election and in some way affect the result." *Berry v. Spigner*, 226 S.C. 183, 190, 84 S.E.2d 381, 384 (1954) (internal quotes omitted). "[O]ur General Assembly has specified that statutes concerning absentee registration and absentee voting shall be liberally construed." *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 374 S.E.2d 685 (1988) (citing S.C. Code Ann. § 7-15-20).

## ARGUMENTS

This Appeal presents issues and arguments that unfortunately have much in common with the countless legal challenges spawned by the November 3, 2020 United States presidential election. Much like those challenges, the case currently before the Court contains broad and conclusory allegations of election irregularities that are not supported by any evidence. Much like those challenges, the case currently before the Court involves witnesses, including investigators and handwriting experts, whose contentions of voting irregularities have been refuted through the testimony of the very electors who they were attempting to disenfranchise. Much like those challenges, in various stages of this challenge the Appellants have participated in proceedings with no supporting evidence of election irregularities other than false affidavits. And much like those challenges, Appellants in this case wish to disenfranchise the voters of McBee, despite the fact that they have produced zero evidence demonstrating that a single vote was cast that did not accurately reflect the will of a lawful elector. Appellants wish to cast doubt on the votes of ten to 28 voters without any evidence that those votes were illegal or were unduly

influenced by a member of a campaign. Respondent respectfully requests that the Court respond in exactly the same manner as other courts before it and affirm the decision of the Circuit Court.

## I. Appellants' First Issue is not Preserved for Review, and Even if it Were, There is no Evidence in the Record Supporting the MEC's Factual Finding That at Least Ten Ballots Were Improperly Requested by Sydney Baker.

### A. The issues of whether the Circuit Court exceeded its scope of review, and whether Baker's conduct was a violation of sections 7-15-380 and 7-13-770, are not preserved for appellate review.

As an initial, threshold matter, Appellants' arguments that the Circuit Court exceeded its scope of review, and that Baker's conduct violated section 7-15-380 and 7-13-770, have not been preserved by Appellants. Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the court with a platform for meaningful appellate review. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Appellants claim that the Circuit Court erred by substituting its own factual findings for those of the MEC. Even though this is not the case, Appellants have not properly preserved this issue for the Court's review.

In its December 29, 2020 Order, the Circuit Court found that the evidence did not support the facts as found by the MEC as follows: (1) the evidence did not support that Baker had requested ten to 15 absentee ballots and showed that Baker had only assisted electors in making their own requests for absentee ballots, and (2) the evidence did not support that Baker was a paid volunteer of Odom's campaign. (R. p. 13). In their Motion for Reconsideration, Appellants Short, Sutton, and Dixon failed to raise the issue of whether the Circuit Court had exceeded its scope of review in making these findings. Instead, Appellants only argued that there was

evidence in the record supporting the findings of the MEC. (R. pp. 435-39). Since the question of whether the Circuit Court exceeded its scope of review was never raised to the Circuit Court in a Motion for Reconsideration, and the question was therefore never ruled upon by the Circuit Court, it is not preserved for appellate review.[5] Thus, the proper question for the Court is whether any evidence in the record supports the Circuit Court's findings that (1) Baker had not requested ten to 15, much less 28, absentee ballot applications for electors, and (2) Baker was not a paid employee of the Odom campaign, with all possible reasonable presumptions construed in favor of sustaining the certified election results.

B. The record reasonably supports the Circuit Court's factual finding that there was no evidence in the record of Baker improperly requesting more than ten absentee ballots for qualified electors.

Even if the issue of whether the Circuit Court exceeded its scope of review was preserved, Appellants' arguments would still fail because there is no evidence in the record supporting the MEC's finding that Baker requested ten or more absentee ballots in violation of section 7-15-330. Section 7-15-330 prohibits certain unauthorized individuals from ***requesting absentee ballot applications*** on the behalf of qualified electors. S.C. Code Ann. § 7-15-330. Appellants contend that the evidence in the record supports the MEC's finding that Baker improperly requested at least ten absentee ballot applications in the election. This is completely untrue. Nowhere within the record is there any evidence that Baker requested ten or more absentee ballots on behalf of the electors.[6] Despite this, the MEC's decision found that: (1)

[5] Appellants' arguments as to sections 7-15-380 and 7-13-770 are not preserved for review for the same reasons. Nowhere in the MEC's decision, the Circuit Court's Order, or Appellants' Motion for Reconsideration do Appellants raise these arguments, nor have they been ruled on.

[6] Appellants are likely to reply that this argument is presented for the first time within this brief and not suitable for review; however, a respondent is permitted to include additional sustaining grounds supporting a trial court's decision. *See* Rule 208(b)(2), SCACR; *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418, 526 S.E.2d 716, 722 (2000). The issue of whether there is any

"Sydney Baker . . . requested, witnessed, or assisted in the completion of between 10 and up to 28 of the votes delivered by absentee ballot . . . ."; (2) "she estimated she helped to request 10 to 15 absentee ballots"; (3) "Baker applied for at least 10 and up to 28 absentee ballots"; and (4) "the MEC has declared Twenty-Eight (28) votes were improperly cast." (R. pp. 16-21).

The choice of the numbers ten and 28 by the MEC in its decision was by design and not happenstance. In order to elicit testimony from witnesses sufficient to call the outcome of the election into doubt, the testimony would have to show that Baker improperly requested at minimum ten absentee ballot applications, as ten represents the number of prevailing votes acquired by both Odom and Liles. 28 would have served Appellants' interests even better, as it represents the number of votes Dixon needed to overcome Liles in the Town Council election. Thus, during the protest hearing, counsel for Short, Sutton, and Dixon repeatedly asked Baker questions regarding the numbers ten and 28. (R. p. 580, lines 3-14; p. 581, lines 8-21).

Anything less would have been incapable of making a difference in the outcome of the election. However, a careful reading of the transcript reveals that Baker was never asked a question about ***how many absentee ballot applications she assisted electors with requesting***. Nor is there any evidence in the record demonstrating the same. Instead, the questions put forth by Appellants' counsel only asked how many individuals she met with, and if she would be surprised that she ***witnessed 28 absentee ballots*** (as opposed to how many ***absentee ballot application requests*** she assisted with):

Q. Okay. Approximately how many individuals ***do you think you met with***?

A. ***I – I really don't recall.***

Q. More than – ***more than ten***?

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evidence that Baker improperly requested 10 or more votes is found in the record within the Circuit Court's December 29, 2020 Order. (R. p. 13).

A. ***I guess***. That's reasonable.

Q. More than 20?

A. ***I didn't kept tab – keep track of how many***.

Q. I'm just – and again, I'm not asking you for a specific number. More than – more than 50?

A. Might have been 10, 15 maybe.

Q. ***Ten to fifteen.***

***

Q. Approximately – and again I'm not asking for an exact number – but approximately how many – how many times ***did you witness someone's*** –

A. I'm going to guess and say 10 to 15 because I didn't keep track***. I don't know***.

Q. ***Would it surprise you that your name appeared on at least 28 ballots***?

A. Like I said, I'm guessing. I didn't keep track.

Q. I'm just asking would that surprise you?

A. No. It wouldn't. ***I don't keep track of numbers***.

(*Id.*) (emphasis added). Moments later, Baker stated that she did not assist in requesting an absentee ballot application for every individual she met with. (R. p. 581, lines 22-25; p. 582, lines 21-25).

This testimonial evidence should not have been solely relied upon by the MEC to support its factual findings. General allegations of illegal activity will not support the burden of establishing that an irregularity flawed the election. *Fielding v. S.C. Election Comm'n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). In *Fielding*, a candidate for probate judge in Charleston County challenged the results of an election on the basis of voting irregularities that occurred at

two precincts. *Id.* at 315, 408 S.E.2d at 233. In overturning the election, the South Carolina Board of State Canvassers relied on testimony from witnesses claiming that (1) people were selling their votes, (2) minorities were receiving voting assistance illegally, and (3) young people were receiving voting assistance illegally. *Id.* In reversing the State Board, the Court went to lengths to emphasize that no documentation demonstrating the number of irregularities which occurred was in the record, and that the testimony of the witnesses was uncorroborated and speculative. *Id.*

In answering the question of whether the evidence relied upon by the State Board was sufficient to overturn the election, this Court decided it was not:

> Adverting to the record here, it is patently clear that the evidence relied upon by the State Board falls far short of that required for the invalidation of an election. Viewing it in the light most favorable to candidate Merrill, the evidence rises, at best, to the level of conjecture, speculation, and surmise: no poll manager or poll watcher who testified ***could identify a definitive number of alleged illegal votes cast***; the testimony concerning vote-buying was totally without substantiation as to either the giver or receiver of the monies; the testimony concerning illegal assistance was based upon the subjective opinion of the poll watcher; and, finally, ***no documentation whatsoever of any of the alleged irregularities was presented***, only the uncorroborated opinions of individuals.

*Id.* at 317, 408 S.E.2d at 234 (emphasis added). In other words, bare allegations supported only by uncorroborated testimony, and not documentation, are insufficient to overturn an election. As the Court concluded,

> "[w]hile corruption-free elections are imperative to the very survival of the republic, ***it is equally essential that, where corruption is charged, a documented record be established upon which alleged wrongdoing may receive appellate review***. As indicated earlier, the record before us is comprised only of conjecture, speculation, and surmise; it clearly does not sustain the burden . . . that every reasonable presumption will be indulged to sustain [the election]."

*Id.* at 318, 408 S.E.2d at 235 (citations and internal punctuation omitted) (emphasis added).

Again, nowhere in the record is there any evidence, documented or testimonial, of exactly how many absentee ballot application requests Baker assisted electors with, nor is there evidence that she actually witnessed 28 absentee ballots.[7] And even if she did witness 28 ballots, witnessing an absentee ballot is not tantamount to requesting an absentee ballot application and does not violate section 7-15-330. In other words, the Circuit Court was correct in finding that there was no evidence in the record supporting the MEC's finding that Baker improperly assisted in requesting at least ten absentee ballot applications in violation of the statute. At best, the evidence only shows that Baker visited possibly ten to 15 individuals to assist with requesting absentee ballot applications, but that she did not assist all of those individuals with requesting absentee ballots.

The evidence also shows that she may have witnessed 28 absentee ballots; however, this conduct is not within the contemplation of section 7-15-330. This is fatal to Appellants' efforts to overturn the election, as Short and Sutton's challenges require irregularities with at least ten votes each to affect the outcome of the election. Regardless of whether the Circuit Court was correct, which it was, in finding that there was no evidence supporting the above described findings of the MEC, the Circuit Court gave an additional sustaining reason for reversing the MEC's decision. In doing so, the Circuit Court explained that the complained of conduct of Baker in assisting electors with requesting an absentee ballot online did not violate the plain language of section 7-15-330.

## II. The Circuit Court did not Err in Concluding That Bakers' Conduct was not in Violation of Section 7-15-330.

[7] The only evidence in the record quantifying how many certified votes received assistance from Baker in applying for an application comes from June Wright, who testified that Baker assisted him in requesting an application. (R. p. 644, line 15-p. 646, line 3). That number is one, far short of what would be required to render the outcome of the election doubtful.

A. The Circuit Court correctly declined to expand the scope of section 7-15-330 to encompass Baker's activities.

The Circuit Court correctly held that the conduct described in the MEC protest hearing was not a violation of section 7-15-330. It is entirely within the province of a circuit court to review a municipal election commission's decision for errors of law. *Blair v. City of Manning*, 345 S.C. 141, 144, 546 S.E.2d 649, 651 (2001). In its Order, the Circuit Court concluded that the subject conduct did not violate section 7-15-330, as the voter's absentee ballot application request was transmitted electronically on Baker's iPad through the State Election Commission website's absentee ballot application request tool. (R. p. 14).

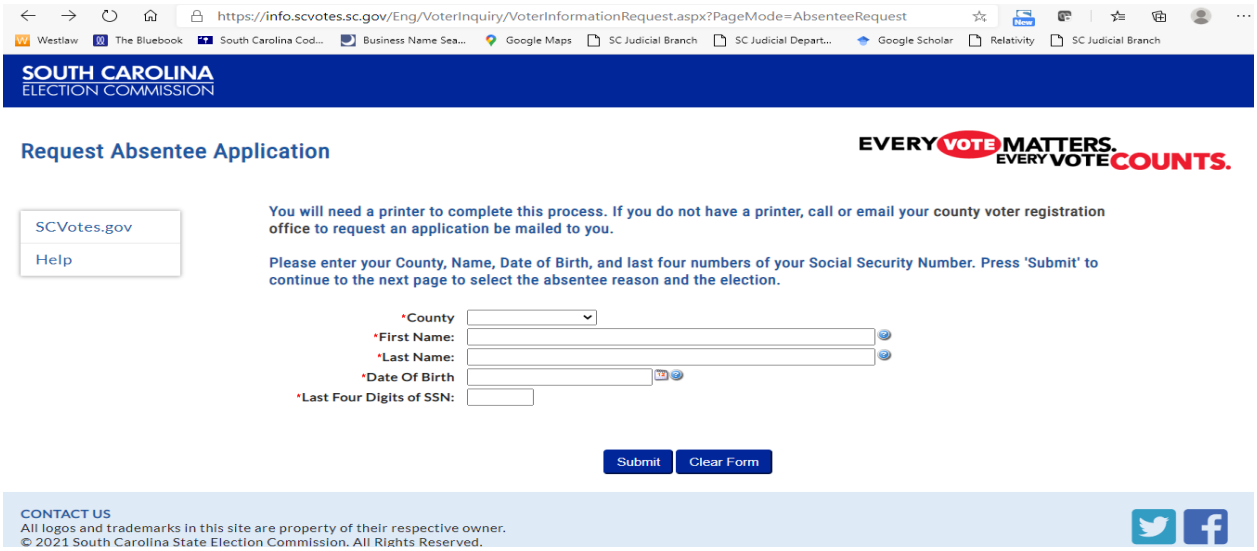
"The cardinal rule of statutory construction is that the court ascertain and effectuate the intent of the legislature." *Odom*, 427 S.C. at 310, 831 S.E.2d at 432. Courts should construe statutes according to their plain language, and if the language of the statute is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed ***and the court has no right to impose another meaning***." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added). "The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or ***expand the statute's operation***." *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007) (emphasis added). The relevant language of section 7-15-330 states that

> To vote by absentee ballot, a qualified elector or a member of his immediate family must request an application to vote by absentee ballot ***in person, by telephone, or by mail from the county board of voter registration and elections, or at an extension office of the board of voter registration and elections as established by the county governing body***, for the county of the voter's residence. A person requesting an application for a qualified elector as the qualified elector's authorized representative must request an application to vote by absentee ballot ***in person or by mail only*** . . . and must sign an oath to the effect that he fits the statutory definition of a representative . . . . A candidate or a member of a candidate's paid campaign staff, including volunteers reimbursed for time expended on campaign activity, is not allowed to request applications for absentee

> voting for any person designated in this section unless the person is a member of the immediate family.

S.C. Code Ann. § 7-15-330 (emphasis added). Thus, the plain language of section 7-15-330 does not encompass the complained of conduct.

It is uncontested by the parties that qualified electors are permitted to request absentee ballot applications electronically online through the State Election Commission's website, although this method is not described in the statute. (Appellants' Initial Br. at 12). The issue is therefore not whether the practice is lawful, but whether the statute's requirements for a person requesting an application as an authorized representative would apply to an individual assisting an elector in making an online request for an absentee ballot application. The online absentee ballot application request tool appears as follows:




S.C. State Election Comm'n, *Request Absentee Application*, https://info.scvotes.sc.gov/eng/voterinquiry/VoterInformationRequest.aspx?PageMode=AbsenteeRequest (last visited August 20, 2021).

Clearly, the application tool depicted above is not within the contemplation of section 7-15-330. A voter or a family member submitting her information directly to the State Election

Commission electronically through a website is not requesting an application in person, by telephone, or by mail. Nor is a person submitting the information on another's behalf doing so in person or by mail. The request is also not directed to a county board of voter registration and elections or an extension office established by a county governing body. The tool is obviously sanctioned by the State Election Commission and is a proper way to request an application for an absentee ballot. However, since it is not described as a method for requesting absentee ballot applications within the statute, this begets the question of whether the Court should judicially expand the requirements described in section 7-15-330 for authorized representatives to apply to this online method as well. After all, the General Assembly does not appear to have contemplated the logistics of online absentee ballot application requests at the time it drafted the statute.

The decisions of this Court caution against doing so, as it would judicially "expand the statute's operation" by forcing a construction of the terms "in person", "by telephone", and "by mail" to include requests that are submitted online through a website. *See Catawba Indian Tribe*, 372 S.C. at 525-26, 642 S.E.2d at 754. As an additional reason for declining to interpret the statute in such a fashion, any interpretation of the statute to include methods of requesting absentee ballot applications that are not "in person", "by telephone", or "by mail" would implicate a potential political question, placing the Court in conflict with a coequal branch of government. The Constitution explicitly provides that "[t]he General Assembly shall . . . provide for the administration of elections and for absentee voting . . . ." S.C. Const. art. II § 10. "[T]his Court has declined to opine on issues where the Constitution delegates authority to the General Assembly." *S.C. Public Interest Foundation v. Judicial Merit Selection Comm'n*, 369 S.C. 139,

143, 632 S.E.2d 277, 278-79 (2006). The power to determine the administration and procedures for elections and absentee voting is vested with the General Assembly.

In *Taylor*, the Court was faced with a similar dilemma. On appeal, the challengers of an election in the Town of Atlantic Beach raised the issue of whether existing statutory law required an election commission to include findings of fact and conclusions of law in its written orders. *Taylor*, 363 S.C. at 12, 609 S.E.2d at 502. While the Court found that section 5-15-130 required an election commission to conduct a hearing, decide the issues raised, file a report with the testimony and exhibits, and notify the parties of the decision, it did not by its plain terms require an order including findings of fact or conclusions of law. *Id.* at 15, 609 S.E.2d at 503. The Court concluded

> We decline to impose standards for written orders on election commissions beyond those imposed by statute. It is within the plenary power of the Legislature, not this Court, to promulgate election standards or enact statutory election requirements which address the necessity or substance of written orders issued by an election commission.

*Id.* The Court should do the same here and affirm the Circuit Court's decision, which in effect refrains from imposing standards and absentee ballot application requirements on a method of requesting absentee ballot applications undescribed by the existing statutory language. Regardless, even if the Court were to interpret the statute such as to apply to online application requests, there is evidence in the record supporting the Circuit Court's factual finding that Baker only assisted electors in making their own online requests for absentee ballot applications.

B. There is evidence in the record supporting the Circuit Court's factual finding that Baker only assisted electors in making their own requests for absentee ballot applications and did not request the applications herself.

As previously noted, in appeals from municipal election contests, this Court only reviews the factual findings of a circuit court if the findings are ***wholly*** unsupported by the evidence in

the record. *See Knight*, 297 S.C. at 55, 374 S.E.2d at 685. Additionally, our absentee registration and absentee voting statutes are to be liberally construed. *Id.* The Circuit Court liberally construed section 7-15-330 to not demand strict compliance with the procedural requirements and technicalities of the statute for an individual who was merely assisting another elector in making their own request for an absentee ballot application, as opposed to making the request for the elector.

There is evidence in the record supporting the Circuit Court's finding that Baker merely assisted other electors in making their own requests. Baker testified that she only assisted the electors in the application process. (R. p. 580, lines 21-23). Baker stated that she helped them obtain a ballot, and not that she obtained the ballot for them. (R. p. 579, lines 16-17; p. 580, line 24). And contrary to Appellants' assertions, Baker never testified that she "filled in the information" or "put the application in the mail." (Appellants' Initial Br. at 13). Elizabeth Murphy stated that Baker came to her house to assist with registration, and that she followed Baker's directions to vote absentee. (R. p. 624, lines 13-14). She does not state that Baker completed the application process for her. Murphy also stated that she might have done the request for an application on her own phone (presumably on a browser) but not on the "internet per se." (R. p. 626, lines 12-18).

Therefore, there is evidence in the record supporting the Circuit Court's factual finding that Baker merely assisted other voters in making their own requests for absentee ballot applications, which would not run afoul of section 7-15-330's authorized representative requirements. Baker's actions were akin to an individual transporting an elector to a county board office so that the elector could request their own application. In rural counties, much of the electorate does not have the means to travel to county offices, or access to printers and

computers with which they could acquire an absentee ballot application. Surely, the General Assembly did not intend to require that all neighbors and friends performing community-oriented acts such as giving a ride to the county office, or permitting the use of their computers or phones for application requests, must be a statutorily authorized representative or risk disenfranchising the elector. For these reasons, the Court should affirm the decision of the Circuit Court.

## III. In This Case, Violations of Section 7-15-330 Cannot Serve as a Basis for Overturning the Election.

In its Order, the Circuit Court concluded that there was no authority for overturning an election based on a violation of section 7-15-330. Appellants have reached the opposite conclusion. While the analytical framework employed by Appellants is correct, it reaches the incorrect result; an accurate application of the facts in the record indicates that (1) Appellants' claimed "irregularities" do not render the outcome of the election doubtful; (2) there is no evidence of fraud, and fraud has not been asserted by Appellants, (3) there is no evidence of a constitutional violation, and (4) section 7-15-330 does not provide that its violation shall invalidate an election.

As a rule, provisions such as section 7-15-330 are mandatory under only two circumstances: when the statute expressly states that it is essential to the validity of an election, and when enforcement of the statute is sought before the election in a direct proceeding. *George*, 335 S.C. at 186, 516 S.E.2d at 208. "After an election in which no fraud is alleged or proven, when the Court seeks to uphold the result in order to avoid disenfranchising those who voted, such provisions are merely directory even though the Legislature used seemingly mandatory terms such as 'shall' or 'must' in establishing provisions." *Id.* The Court has also stated that "where the result of an election is not made doubtful nor changed, irregularity or illegalities, in the absence of fraud, will not cause the expressed will of the body of the voters to be set aside,

unless a constitutional provision is violated or it is specifically provided by legislative enactment that such irregularity or illegality shall invalidate the election." *Yonce v. Lybrand*, 254 S.C. 14, 18, 173 S.E.2d 148, 150 (1970).

To be sure, Appellants have only asserted two supposed electoral irregularities: (1) Baker requested absentee ballot applications and was not a statutorily authorized representative under 7-15-330, and (2) Baker was a paid member of the Odom campaign. As to the second claim, there is absolutely no evidence in the record supporting that Baker was paid by the Odom campaign. *See infra* Section IV. Assuming that there was evidence in the record supporting that the first of these claims is true, even so, the outcome of the election would not be rendered doubtful, as there is no evidence the irregularity itself affected the outcome of the election. The only witnesses before the MEC who were allegedly assisted by Baker, Elizabeth Murphy and June Wright, both testified that they were not unduly influenced by Baker, and that they voted as they wished. (R. p. 629, lines 6-7; p. 645, lines 20-21).

Thus, there is no evidence in the record that Ms. Baker's failure to register as an authorized representative with the County had any influence on the way any electors cast their votes and does not bring the outcome of the election into doubt. There is no evidence in the record of fraud, undue or unwarranted influence that affected a vote, or a constitutional violation, and Appellants have not alleged that fraud or constitutional violations occurred in this election. Finally, section 7-15-330 does not state that violations of the statute will invalidate the outcome of an election. "In the absence of fraud, a constitutional violation, or a statute providing an irregularity or illegality invalidates an election, the Court will not set aside an election for a mere irregularity." *Broadhurst*, 342 S.C. at 381, 537 S.E.2d at 547.

Appellants cite to several decisions of this Court to support their contention that Baker's alleged violations of section 7-15-330 should justify overturning the election. However, all of the cited authorities are factually inapposite and unavailing to Appellants for key reasons. In *Broadhurst*, (1) a voting machine malfunctioned and failed to record 231 votes, (2) it was unknown who the 231 votes were cast for, and (3) the election outcome could have been affected depending on how many votes out of the 231 the challenger received. *Id.* at 378, 537 S.E.2d at 545. Here, there is no documentary or testimonial evidence demonstrating exactly how many absentee ballot applications Baker may have assisted with, nor is there any evidence that the ballots themselves were ***illegally cast***. *See id.* at 382, 537 S.E.2d at 547 (stating that in determining whether an irregularity in the conduct of an election is sufficient to render the result doubtful, the rule deducible from the decisions is that all ***illegally cast*** ballots shall be deducted from the total number counted for the declared winning candidate). Section 7-15-330 prescribes certain requirements for the requesting of absentee ballots, but its violation has no bearing on whether the ballot itself will be cast legally or illegally.

In *George*, there was evidence of a specific constitutional violation that had been alleged by the appellants. *George*, 335 S.C. at 187, 516 S.E.2d at 209. In *Gecy v. Bagwell*, much like in *Broadhurst*, there was evidence in the record of exactly how many irregularities occurred in the election. *Gecy*, 372 S.C. at 240, 642 S.E.2d at 570. Here, there is simply no evidence of fraud, constitutional violations, illegally cast ballots, or undue influence in the casting of ballots, and even if there was, there is not sufficient evidence in the record demonstrating exactly how many irregularities occurred from which the Circuit Court, or this Court, could determine that irregularities would change or render doubtful the result of the election.

## IV. There is no Evidence in the Record Demonstrating That Sydney Baker was a Paid Volunteer of the Odom Campaign.

The Circuit Court determined that there was no evidence in the record upon which the MEC could base its finding that Baker was a paid volunteer for Odom's campaign. (R. p. 13). The MEC based its decision to overturn the election on its erroneous conclusion that Baker was paid by the Odom campaign, which would violate section 7-15-330. (R. p. 19). Appellants assert that the MEC's finding was proper, arguing that the MEC was allowed to discount Baker's testimony that she was not paid by Odom. Through the process of transmutation, somehow this now amounts to evidence of the direct opposite of her testimony, that Baker was paid by Odom, despite the fact that there is no corroborating testimony indicating such. Appellants also assert that the MEC's finding was supported by its 2016 election decision, even though the decision was not in the record, not subject to the doctrine of judicial notice and constitutes prohibited evidence of specific instances of a witness's conduct.

A. The MEC's findings on Sydney Baker's credibility do not amount to evidence that she was a paid volunteer of the Odom campaign.

Appellants would have the Court believe that because the MEC found that Baker's testimony lacked credibility, it follows that her testimony constitutes evidence of the opposite of her testimony, i.e., that she was in fact a paid volunteer of the Odom campaign when she stated that she was not. Appellants would have the Court believe this proposition despite a total lack of corroborating evidence of any kind in the record evincing that Baker was paid by the Odom campaign. The Circuit Court was correct in reversing the MEC's decision, as Baker's testimony does not constitute evidence that she was paid by Odom's campaign.

While the factfinder is at liberty to discredit the testimony of witnesses, "the mere fact that the testimony of a witness as to a fact is not believed does not of itself warrant a finding to

the direct opposite of such testimony." *Miller v. Smith*, 20 A.D. 507, 510-11, 47 N.Y.S. 49, 51 (N. Y. App. Div. 1897).

> Direct and positive testimony . . . which is given by an unimpeached witness as to the existence of a fact apparently within his own knowledge, which is not in itself incredible, impossible, or inherently improbable, and which is not contradicted directly or by proof of facts or circumstances that could be taken as incompatible with such testimony, can not be arbitrarily rejected by a jury or other trier of the facts upon the mere surmise that it perhaps might not be in accord with the truth.

*Myers v. Phillips*, 197 Ga. 536, 29 S.E.2d 700 (Ga. 1944). "Disbelief of denials of facts which a party must prove is not the equivalent of affirmative testimony in support of those facts." *Chapman v. Troy Laundry Co.*, 87 Utah 15, 47 P.2d 1054, 1062 (Utah 1935). As election challengers, the burden was on Appellants to prove that Baker was a paid volunteer of the Odom campaign. While the MEC may have discounted Baker's testimony that she was not paid by Odom, the MEC's disbelief of her denial does not create evidence that she was paid.

There is no evidence in the record that Baker was paid by the Odom campaign. Baker testified that Odom did not work for or own her employer, and had not worked there for at least three months prior to the election. (R. p. 576, line 20-p. 577, line 12; p. 585, line 7-p. 586, line 7). Leading up to the election, Baker decided to volunteer her time by assisting McBee citizens in requesting absentee ballot applications. (R. p. 579, lines 2-5). Baker testified that she was not paid to assist anyone in voting. (R. p. 579, lines 7-8). There is no evidence in the record, testimonial or otherwise, refuting Baker's testimony. Appellants and the MEC have pointed to the website for Baker's employer as evidence that (1) Odom and Baker both worked for Alligator during the election, (2) Baker was not credible, and (3) Baker was a paid volunteer of the Odom campaign. (R. p. 19). Baker offered a reasonable explanation for why Odom was still listed on the website. (R. p. 585, line 6-p. 586, line 8). Regardless, even if the website established that Baker's testimony was not credible, at best all it proves is that Odom and Baker both worked

for the same employer. It held no probative value as to whether Baker was paid by Odom's campaign, and either way, it is not part of the factual record in this case. The Circuit Court correctly found that there is no evidence in the record that Baker was a paid volunteer for Odom's campaign.

B. The 2016 MEC election decision is not evidence that Baker was a paid volunteer of the Odom campaign.

The 2016 MEC election decision was not made part of the record before the MEC during the November 13, 2020 hearing, should not be included as part of the Record on Appeal, and should not be considered by the Court pursuant to Rule 210(h), SCACR. The decision was improperly relied upon by the MEC in its decision to overturn the subject election. (R. p. 19). The Circuit Court found that the decision was not part of the record created during the hearing before the MEC. (R. p. 13).

No exhibits were introduced and preserved for the record during the November 13, 2020 hearing. Counsel for Appellants mentioned prior decisions of the MEC in closing, but the decisions were never authenticated or introduced as evidence for the MEC's consideration. (R. p. 657, line 16-p. 658, line 23). Notwithstanding Appellants' assertion that the MEC may take judicial notice of the 2016 election decision, the South Carolina Code and South Carolina Rules of Evidence indicate otherwise. While it is true that ***courts*** may take judicial notice of facts not subject to reasonable dispute within their records, the rules for administrative tribunals such as a municipal election commission differ. Rule 201, SCRE, only provides that a ***court*** may take judicial notice, whether requested or not, at any stage in the proceeding.

Municipal election commissions, on the other hand, are constrained by S.C. Code Ann. section 1-23-330. Section 1-23-330 provides that before a commission authorized by law to determine contested cases, notice of judicially cognizable facts may only be taken before or

during the hearing, and parties shall be afforded an opportunity to contest the material so noticed. S.C. Code Ann. § 1-23-330. The 2016 election decision was not noticed by the MEC until it issued its decision, after the hearing. Since Odom was not afforded the opportunity to contest the material at the hearing, the MEC is not permitted to take notice of the material. Furthermore, while it may be true that the citizens of McBee are generally knowledgeable about the repeated issues with the town's elections, it does not stand to reason that any disputed facts within the 2016 election decision are judicially cognizable as proof that Baker was a paid volunteer of Odom's campaign in 2020.

As a final ground for sustaining the Circuit Court's decision that the MEC's 2016 election decision was not part of the record, Rule 608, SCRE, prohibits its admission as evidence for the purpose of attacking Baker's credibility. Specific instances of the past conduct of a witness, for the purpose of attacking the witness's credibility, may not be proven by extrinsic evidence unless they are inquired into on cross-examination of the witness concerning her character for truthfulness or untruthfulness. Rule 608, SCRE. Any facts within the 2016 election decision were not inquired into during the examination of Baker at the November 13, 2020 hearing, and the MEC did not take notice of the decision until after the hearing, in violation of Rule 608, SCRE, and section 1-23-330. In any event, even if the MEC could take notice of the decision, it contains no evidence that Baker was a paid volunteer of the ***2020*** Odom campaign. Consequently, the Circuit Court correctly found that the 2016 election decision was not part of the record, and there was no evidence in the record establishing that Baker was a paid volunteer of the Odom campaign.

## V. Even if Baker had Violated Section 7-15-330, There is not Sufficient Evidence in the Record Demonstrating That the Violations Would Render the Outcome of the Election Doubtful.

As a final argument, Appellants propose that Baker's activities call the outcome of the election into question. In doing so, Appellants rely on *Broadhurst*'s rule that to determine whether an irregularity renders the result of an election doubtful, illegally cast ballots must be deducted from the total number counted for the declared winning candidate. *Broadhurst*, 342 S.C. at 382, 537 S.E.2d at 547. For the reasons put forth above, it is impossible for Appellants to show that Baker improperly requested absentee ballot applications for ten or more electors, as there is no evidence in the record of exactly how many electors she assisted with requesting absentee ballot applications, and the evidence supports the possibility that it was less than ten. Under the Court's reasoning in *Fielding*, it was improper for the MEC to invalidate the election solely on the basis of Baker's testimony, especially where the evidence did not identify a definitive number of alleged illegal votes cast, and no documentation whatsoever of any of the alleged irregularities was presented. *Fielding*, 305 S.C. at 315, 408 S.E.2d at 233.

*Knight* lends further support to the Circuit Court's decision to reverse the order of the MEC. In *Knight*, a candidate for sheriff contested the decision of the State Board affirming the results of the Dorchester County Sheriff's Election. *Knight*, 297 S.C. at 56, 374 S.E.2d at 686. The candidate contended that a new election should have been held due to multiple statutory irregularities in the submission of and counting of absentee ballots. The Court concluded that the State Board was correct in affirming the counting of the absentee ballots, even if they did not meet all the technical absentee ballot requirements, as the statutes concerning absentee registration and voting must be liberally construed. *Id.*

As discussed in *Odom*, in three cases this Court has ordered a new election when "the addition of uncounted but legally cast votes ***or the subtraction of counted but illegally cast votes cast doubt upon the results of an election.***" *Odom*, 427 S.C. at 312, 831 S.E.2d at 433 (emphasis

added). In each of these cases, the Court ordered a new election only after there was an uncontested or definitive number of votes that were shown to have been illegally cast. *See Broadhurst*, 342 S.C. at 378, 537 S.E.2d at 545 (overturning election where 231 votes were cast on a voting machine that malfunctioned); *Easler v. Blackwell*, 195 S.C. 15, 10 S.E.2d 160 (1940) (more than 100 voters allowed to vote after the polls had closed); *Gecy*, 427 S.C. at 240, 642 S.E.2d at 570 (two illegal votes were cast by voters who voted in their old precincts after changing addresses). Here, the testimonial evidence from Baker, while indicating that she may have visited ten to 15 voters, does not indicate how many of those voters she may have assisted with making their absentee ballot application requests, as she also testified that she did not assist every voter she visited. Only two witnesses were identified, only one of which whose vote was actually certified, who could state that Baker did provide some manner of assistance to them in requesting an application. This evidence falls far short of the necessary proof required to overturn this election.

In an effort to bolster their arguments as to why the election should be overturned, Appellants cite to *George* and two sections of the South Carolina Constitution, apparently in an attempt to allege that some manner of constitutional violations have occurred. However, Appellants fail to describe exactly how the Constitution has been violated in this case, as there is no evidence in the record demonstrating that any votes were unfairly influenced, and thus they fail to connect the facts of this case to those in *George*. In sum, Appellants have done nothing to further their case that the results of the 2020 McBee general election should be overturned. Based on the evidence in the record, with all requirements of the absentee statutes liberally construed, and reasonable presumptions cast in favor of sustaining the election, (1) there is no evidence of how many absentee ballot application requests Baker assisted with, (2) there is no

evidence that Baker assisted with ten or more absentee ballot application requests, (3) there is evidence in the record that Baker only assisted other electors in making their own requests for absentee ballot applications, which is not in violation of section 7-15-330, (4) there is not sufficient evidence in the record demonstrating that any votes were illegally cast, and if they were, how many were illegally cast, (5) there is no evidence in the record of fraud, constitutional violations, or undue influence, (6) there is no documentary evidence in the record of any alleged voting irregularities, and (7) there is no evidence in the record that Baker was a paid volunteer of the Odom campaign. As such, Appellants cannot demonstrate for the Court that any alleged irregularities would render the outcome of the election doubtful, and therefore cannot demonstrate that the election should be overturned.

## CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Court affirm the Circuit Court's Order reversing the decision of the McBee Election Commission.

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

November 29, 2021
Hampton, South Carolina

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